IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO. 52 OF 2003.

Rasiklal M. Gangani,
Galaxy Building,
Opposite Hotel Nova Goa,
Panaji. ... Applicant.

Versus

1. State through the Public Prosecutor.
2. The Police Inspector-in-charge Panaji Town Police Station, Panaji.
3. Mr. Dilip Shirodkar, Miramar. ... Respondents.

Mr. A.P. Lawande, Advocate for the Applicant.

Mr. S.N. Sardessai, Public Prosecutor for the Respondents 1 and 2.

Mr. S.D. Lotlikar, Senior Advocate with Miss S. Dessai, Advocate for the Respondent No. 3.

Coram : P.V. HARDAS, J.

Date : 7th November 2003.

ORAL JUDGMENT.

This application is filed by the applicant, against whom an offence, vide Crime No. 37 of 2003, is registered under Section 506(ii) of the Indian Penal Code, for quashing the said First Information Report, dated 26th February 2003.

2. The facts in brief, as are necessary for the decision of the application, are set out hereunder:-

The respondent no. 3 herein filed a complaint to the Panaji Town Police Station, on 26th February 2003, against the applicant, complaining the commission of an offence

punishable under Section 506(ii) of the Indian Penal Code. On the basis of the said report, crime under the aforesaid Section was registered at No. 37 of 2003.

3. Mr. Lawande, learned counsel appearing for the applicant, has urged before me that the offence punishable under Section 506 of the Indian Penal Code is non-cognizable as is evident from the perusal of the Ist Schedule of the Code of Criminal Procedure. A perusal of the Ist Schedule of the Code of Criminal Procedure shows that an offence punishable under Section 506 of the Indian Penal Code is non-cognizable. The first part of Section 506 is a bailable offence, triable by any Magistrate while the second part, with which we are concerned in this application, is shown to be a non-cognizable offence, triable by a Magistrate of the First Class. The second part of Section 506 is a bailable offence. By virtue of the Government Gazette, dated 5th July 1973, and, particularly, Notification bearing No. HD.44-104/73-A, an offence punishable under Section 506 of the Indian Penal Code has been made non-bailable when committed within the Union Territory of Goa, Daman and Diu. In the earlier part of the said Notification, it is stated that offences punishable under Sections 186, 188, 189, 228, 295-A, 298, 505 or 507 of the Indian Penal Code when committed within the Union Territory of Goa, Daman and Diu shall be cognizable. In view of this position, undisputedly the offence punishable under Section 506 and in particular part (ii) of the Section is

non-cognizable.

4. Mr. Lotlikar, the learned senior counsel appearing on behalf of the respondent no. 3, while placing reliance on the original Notification, has submitted that a typographical error had crept in the publication of the Notification in the Official Gazette and instead of Section 506 of the Indian Penal Code, inadvertently Section 505 was printed. Thus, according to him, Section 506 of the Indian Penal Code has been made a cognizable offence. However, the Gazette is an authenticated version and, therefore, reliance will have to be placed on the Government Gazette, which is made available. There is no dispute before me that in the Government Gazette Section 506 of the Indian Penal Code has not been shown to be a cognizable offence.

5. In view of the factual scenario, it is clear that an offence punishable under Section 506 of the Indian Penal Code is non-cognizable and undisputedly the police do not have the jurisdiction to investigate the non-cognizable offence without prior permission of the Judicial Magistrate. The registration of the First Information Report against the applicant in respect of a non-cognizable offence is, therefore, beyond the powers of the police and, as such, deserves to be quashed and set aside. The complainant therein is left to pursue his own remedies, which are available to him under the Code of Criminal Procedure.

6. In the result, therefore, the application is allowed and rule is made absolute in terms of prayer clause (a) and the First Information Report registered by the police for an offence punishable under Section 506(ii) of the Indian Penal Code is, hereby, quashed. In the circumstances, there shall be no order as to costs.

(P.V. HARDAS)
JUDGE.

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